



**Town of Walpole
Commonwealth of Massachusetts
Zoning Board of Appeals**

John Lee, Chairman
Susanne Murphy, Vice Chair
Robert Fitzgerald, Clerk
Mary Jane Coffey, Member
Craig Hiltz, Member

DECISION - BOARD OF APPEALS CASE NO. 04-19

APPLICANT:
The Union Street CME, LLC

FILE

LOCATION OF PROPERTY INVOLVED:

255 Union Street, Walpole and shown on the Assessors Map as Lot No. 21-15, General Residence Zone.

APPLICATION FOR:

A **Special Permit** under Section 5-B, Table 5-B.1.3.b of the Zoning By-Laws to allow the barn structure to be used as a two-family dwelling and to allow the reconstruction of the existing cottage into a two-story, two-family dwelling at 255 Union Street.

A **Special Permit** under Section 6-C.4.A of the Zoning By-Laws to allow three principal structures (two existing and one reconstructed) to be used for residential dwelling units.

On March 20, 2019 a Public Hearing was held in the Main Meeting Room of Town Hall for the purpose of receiving information and voting whether to the grant the **Special Permits** to the Applicant. The board voted to close the hearing on March 20, 2019.

The following members were present and voting:

John Lee, Chairman
Susanne Murphy, Vice Chairman
Robert Fitzgerald, Clerk
Mary Jane Coffey, Member
Drew Delaney, Associated Member

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A motion was made by Suzanne Murphy, seconded by Mary Jane Coffey, to grant a **Special Permit** under Section 5-B, Table 5-B.1.3.b of the Zoning By-Laws to allow the barn structure to be used as a two-family dwelling and to allow the reconstruction of the existing cottage into a two-story, two-family dwelling at 255 Union Street.

The vote was **5-0-0 in favor**; therefore the application for this **Special Permit** is hereby **granted, subject to the conditions enumerated below**: (Lee, Murphy, Fitzgerald, Coffey and Delaney voting in favor)

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A motion was made by Suzanne Murphy, seconded by Mary Jane Coffey to grant this **Special Permit** under Section 6-C.4.A of the Zoning By-Laws to allow three principal structures (two existing and one reconstructed) to be used for residential dwelling units at 255 Union Street.

The vote was **5-0-0 in favor**; therefore the application for this **Special Permit** is hereby **granted, subject to the conditions enumerated below**: (Lee, Murphy, Fitzgerald, Coffey and Delaney voting in favor)

CONDITIONS:

- Except for the change in the buildings as authorized herein, the conditions of the prior approval for Case No. 26-17 dated March 5, 2018 remain in full force and effect.
- Site improvements shall be made as depicted on the plan entitled “255 Union Street Site Plan of Land in Walpole, MA” prepared by Legacy Engineering LLC dated January 21, 2018. This plan is substantially the same as the plan approved in Case No. 26-17 except that the intensity of use within individual buildings has been revised as discussed in this decision.
- This decision modifies the Prior Approval by re-allocating the number of units per building. However, the total quantity of eight dwelling units remains unchanged and may not be increased without further approval.
- The proposed cottage reconstruction shall contain two, one-bedroom units as indicated by the Applicant during the hearing.
- Utility as-built plans shall be submitted to the Engineering Department, including swing ties to pertinent features.
- The barn structure shall be separately connected to the municipal sewer system in accordance with the requirements of the Sewer & Water Department.
- Walkways shall not be asphalt pavement. Other types of surfaces, which provide for adequate and safe pedestrian access may be installed such as gravel, pavers, or concrete
- The Applicant shall satisfy the requirements of E911 relative to site address designations.

REASONS FOR DECISION:

The Board issued a prior approval for this site under Case No. 26-17 in a decision dated March 5, 2018 (the “Prior Approval”).

The property contains three existing structures. The existing “house” structure is two-story residential structure that has been historically used for 3-4 dwelling units. The Prior Approval granted a special permit to use this structure as a four-unit multifamily dwelling. No changes to that Prior Approval are requested with respect to this structure by the Applicant.

The existing "barn" structure has historically been used as a barn and was an antiques consignment shop at one time. The Prior Approval granted a special permit to allow this structure to be used as a three-family dwelling. In the Prior Approval, the Applicant proposed to renovate the interior of the structure, to add a deck and to enclose an existing carport. The Applicant now seeks only to install two units in this structure and does not intend to enclose the existing carport. The Applicant therefore seeks a special permit to allow this structure to be used as a two-family dwelling. This would replace the special permit granted in the Prior Approval to allow the structure to be used as a three-family dwelling.

The existing "cottage" has historically been used as a single dwelling unit and is viewed by the Building Department as a pre-existing non-conforming single-family dwelling unit which did not require a special permit at the time of the Prior Approval for renovation of the structure. The Applicant now seeks to demolish the structure and to construct a new two-story structure which will contain two one-bedroom dwelling units. The Applicant therefore seeks a special permit to allow this reconstructed structure to be used as a two-family dwelling.

At the time of the Prior Approval, there was a moratorium on Section 6-C.4.A special permits and the Board issued a special permit for the proposed redevelopment as an extension of the pre-existing non-conforming residential use of the site. The Applicant now seeks a Section 6-C.4.A special permit to allow three principal structures on the site.

The Applicant is in the process of redeveloping the site per the Prior Approval and has installed the stormwater management system and a parking area (to binder course pavement). Those features as shown on the submitted site plan will be completed as part of this project along with the other site improvements shown on the site plan.

The Board finds that the Applicant was able to meet the requirements of Section 5-B.1.3.b of the Zoning By-law for the granting of a two-family detached dwelling special permit in that such dwelling is:

- i. ... located on a lot having an area of at least twenty thousand (20,000) square feet;*

The Applicant provided documentation that the existing lot has 392,257 s.f. of area, which far exceeds the required lot area.

- ii. Connected to or to be connected at time of construction with the public sewer system.*

The site plan indicates that all three structures are either already connected to the public sewer or will be connected as part of the redevelopment.

The Board finds that the Applicant was able to meet the requirements of Section 6-C.4.A of the Zoning By-law for the granting of a special permit for more than one principal buildings on a lot in that:

➤ ***In a General Residence District;***

The site is located in a General Residence District.

➤ ***On a lot of at least 40,000 square feet;***

The Applicant provided documentation that the existing lot has 392,257 s.f. of area, which far exceeds the required lot area.

➤ ***Where the applicant has also shown that the design and placement of the buildings will be in harmony with the general character of the neighborhood streetscape, driveways, building placement, setbacks, volume, and spacing;***

The Board finds that the property in question lies within an existing residential neighborhood, that the proposed use is a permissible residential use, and that the Applicant proposes to renovate the two existing structures closest to the street, thereby preserving the historic character of the existing property. The Applicant proposes to generally maintain the architecture of these two structures. The proposed reconstruction of the cottage will essentially reside on the footprint of the prior cottage and an associated concrete patio. The proposal therefore maintains the overall density of structures on the site and therefore does not adversely affect the character of the neighborhood. The Applicant is in the process of completing construction of a previously approved driveway and parking area along with other site amenities authorized in the Prior Approval. The Board therefore finds that this criterion is met.

➤ ***Applications for this Special Permit shall provide the information to the Zoning Board of Appeals specified in Section 2 of the Zoning Bylaws and the information that is specified to be provided to the Planning Board required for Full Site plan Review as specified in Section 13 of the Zoning Bylaws.***

The Site Plan that has been provided with the application is substantially the same as the site plan associated with the Prior Approval, which Site Plan was approved by the Planning Board. As such, the Board finds this requirement to be met. The Board takes no position as to whether the plans approved in this Decision require further Planning Board review and/or approval.

FURTHER FINDINGS

It is the finding of the Board that the Applicant was able to meet the requirements of Section 2.2.B of the Zoning Bylaws, which requires that:

(1) Prior to granting a special permit, the SPGA shall make a finding and determination that the proposed use, building, structure, sign, parking facility or other activity which is the subject of the application for the special permit:

(a) Does and shall comply with such criteria or standards as shall be set forth in in the section of this Bylaw which refers to the granting of the requested special permit;

As discussed above, the proposed work complies with the special permit provisions of Section 5-B.1.3.b and 6-C.4.A of the Zoning By-law.

(b) Shall not have vehicular and pedestrian traffic of a type and quantity so as to adversely affect the immediate neighborhood;

The Board finds that the proposed reconfiguration of units within the three buildings on the site is not more intensive than the Prior Approval, which also had a total of eight dwelling units. Thus, there will be no increase in vehicular and pedestrian traffic. Given the size of the lot, the location of the site, and the newly constructed driveway and parking area, the Board finds that the minor changes to the allocation of units within the buildings in this decision will not significantly affect traffic and pedestrian patterns in the immediate neighborhood. The Board therefore finds that this requirement is met.

(c) Shall not have a number of residents, employees, customers, or visitors so as to adversely affect the immediate neighborhood;

The Board finds that the proposed reconfiguration of units within the three buildings on the site is not more intensive than the Prior Approval, which also had a total of eight dwelling units. Thus, the revised use will not generate an unreasonable number of residents or visitors so as to adversely affect the immediate neighborhood. The proposed dwelling units are a mixture of one and two-bedroom units. The Board therefore finds that this requirement is met.

(d) Shall comply with the dimensional requirements applicable to zoning district in which the premises is located, including, without limitation, the applicable lot coverage and buffer zone requirements in Section 5-G;

The Board finds that except for the existing "house" structure, which is pre-existing non-conforming due to front yard setback, the existing barn and the proposed reconstructed cottage structures meet the various dimensional requirements of the Zoning By-law including lot coverage. The existing "house" structure is not being enlarged so there is no increase in the front yard setback non-conformity. There are no Section 5-G buffer zone requirements associated with this use.

(e) Shall not be dangerous to the immediate neighborhood of the premises through fire, explosion, emission of wastes, or other causes;

The Board finds that residential uses are not known to be dangerous due to fire, explosion, emission of wastes, or other causes. This application does not increase the number of dwelling units on the site as compared to the Prior Approval. In addition, the proposed renovation of the existing older structures and the reconstruction of the cottage should reduce the risk of fire and should make the site safer. As such, the Board finds that this criterion is met.

(f) Shall not create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard so as to adversely affect the immediate neighborhood;

The Board finds that residential uses are not known to be typically associated with noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard which would adversely affect the immediate neighborhood. This application does not increase the number of dwelling units on the site as compared to the Prior Approval. As such, the Board finds that this criterion is met.

(g) Shall not adversely effect the character of the immediate neighborhood; and

The Board finds that the property in question lies within an existing residential neighborhood, that the proposed use is a permissible residential use, and that the Applicant proposes to renovate the two existing structures closest to the street, thereby preserving the historic character of the existing property. The Applicant proposes to generally maintain the architecture of the existing buildings. The existing cottage will be reconstructed and repurposed to a two-family dwelling. The proposal therefore maintains the overall density of structures and dwelling units on the site as compared to the Prior Approval and therefore does not adversely affect the character of the neighborhood. The Board therefore finds that this criterion is met.

(h) Shall not be incompatible with the purpose of the zoning Bylaw or the purpose of the zoning district in which the premises is located.

The Board finds that the proposed reuse/reconstruction of existing residential structures for two-family residential structures is consistent with the historical use of the site and is appropriate for the immediate location and neighborhood within the General Residence zone, which is a residential zoning district. As such, the Board finds that this criterion is met.

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Consistency: This decision is consistent with purpose and intent of the Zoning By-laws.

The grant of relief under this decision is limited to the relief expressly granted hereunder; and any other relief sought is hereby denied.

* * * * *

Said Special Permits are granted pursuant to Massachusetts General Laws c. 40A, s.9 which provides in pertinent part as follows:

"...special permits granted under this section shall lapse within a specified period of time, not more than two years, which shall not include such time required to pursue or await the determination of an appeal referred to in section seventeen, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause."

Massachusetts General Laws c. 40A, s. 11. provides in pertinent part as follows:

"A special permit, or any extension, modification or renewal thereof, shall not take effect until a copy of the decision bearing the certification of the city or town clerk that 20 days have elapsed after the decision has been filed in the office of the city or town clerk and either that no appeal has been filed or the appeal has been filed within such time, or if it is a special permit which has been approved by reason of the failure of the permit granting authority or special permit granting authority to act thereon within the time prescribed, a copy of the application for the special permit-accompanied by the certification of the city or town clerk stating the fact that the permit granting authority or special permit granting authority failed to act within the time prescribed, and whether or not an appeal has been filed within that time, and that the grant of the application resulting from the failure to act has become final, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone. This section shall in no event terminate or shorten the tolling, during the pendency of any appeals, of the 6 month periods provided under the second paragraph of section 6. The fee for recording or registering shall be paid by the owner or Applicant."

MASSACHUSETTS GENERAL LAWS c. 40A, s. 15 PROVIDES THAT APPEALS FROM A DECISION OF A BOARD OF APPEALS SHALL BE MADE PURSUANT TO SECTION 17 OF c 40A AND SHALL BE FILED WITHIN TWENTY DAYS AFTER THE DATE OF FILING OF THE NOTICE OF DECISION IN THE OFFICE OF THE CITY OR TOWN CLERK.

WALPOLE ZONING BOARD OF APPEALS

Robert Fitzgerald *RFM*
Robert Fitzgerald, Clerk

cc: Town Clerk
Board of Selectmen

Engineering
Building Inspector

Planning Board
Conservation Commission

This decision was made on March 20, 2019 and filed with the Town Clerk on April 1, 2019.